THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 12673 OF 2005

28th September, 2005.

Between:

Pulipaka Kameswari …Petitioner

A N D

1.The District Collector, Guntur District and Others

…Respondents.

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 12673 OF 2005

ORDER:

1. This writ petition has been filed by Pulipaka Kameswari with a prayer to issue writ, order or direction more particularly one in the nature of writ of mandamus declaring the inaction of the District Collector in not considering the representation filed by her on 13-5-2005 questioning the order of the Revenue Divisional Officer,

Tenali, Guntur in so far as it went against her as arbitrary and illegal.

2. The petitioner claims ownership over an extent of Ac. 8-60 cents comprising Survey No. 785/2, 399 and 790, situated at Yazali village, Karlapalem Mandal, Guntur District having allotted to her share in the family partition. Originally, the property belongs to Y. Manikya Prabhu s/o Venkataramaiah. According to the petitioner, the said Maniyka Prabhu sold the property under an agreement of sale dated 1-4-1980 for a valid consideration to Sai Kumar, who is her cousin and that in the family partition the property fell to her share. She applied for pattedar pass-books and title deeds in respect of the said land to the Mandal Revenue Officer-3rd respondent. The Mandal Revenue Officer –3rd respondent issued pattadar pass books and title deeds in her favour in the year 1985. Respondents No. 4 and 5 claiming that they purchased the property from Manikya Prabhu under registered sale deed dated 8-10-2004, filed application before the Mandal Revenue Officer-3rd respondent for grant of pattedar pass book/title deed. The Mandal Revenue Officer granted pattedar pass books and title deeds on 11-10-2004. The petitioner, assailing the order of the Mandal Revenue Officer in granting the pattedar pass books and title deeds in favour of respondents 4 and 5, filed an appeal before the Revenue Divisional Officer-2nd respondent. The Revenue Divisional Officer-2nd respondent having taken note of the entire history of the case set aside the orders where under pass books have been issued in favour of the petitioner as well as respondents No. 4 and 5 by order dated 8-4-2005. Relevant portion of the order of the Revenue Divisional Officer reads as follows:

> "*As canbe seen from the record of enquiry and document copies filed by both the parties, pass book and title deed has already issued for S.No. 399 and 790 to Smt. Kameswari. The Mandal Revenue Officer, Karlapalem has prepared another PPB in favour of M. Bapi Raju and L. Srinivasa Rao without cancellation of the PPB issued earlier Manikya Prabhu has not objected the issue of PPB in favour of Kameswari earlier. Further, the disputed lands bearing S.NO. 399 was kept undistributed by Y. Venkataramanayya and Y. Raghava Rao vide unregistered doc. Dt. 14-5-1949. As per the unregistered document, dated 14-5-1949 Y. Venkataramanayya and Y. Raghava Rao got 0.95 cents each in S.No. 790. But Pass Book was issued in favour of Kameswari for Ac. 1-90 cents in S.No. 790 unregistered agreement dated 1-4-1980 said to be executed between manikya Prabhu and Saikumar is not*

accepted by Manikya Prabhu. Smt. Kameswari filed suits in O.S.No. 156 of 2004 in Senior Civil Judge Court, Bapatla and another suit in O.S.No. 283/04 in Junior Civil Judge Court, Bapatla for cancellation of registration. This is a case of unsettled land dispute between the legal heirs of late Y. Venkataramanayya and late Y. Raghava Rao from 1949 till to date.

Keeping in view of the above it is ordered for cancellatin of PPB/TD No. 687141 issued in favour of Smt. Kameswari and PPBs bearing Nos. 685175 and 685176 issued in favour of M.Bapi Raju and L.Srinivasa Rao respectively".

3. Assailing the order, the petitioner filed revision before the District Collector-1st respondent under Section 9 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971. She also approached this Court by invoking jurisdiction under Article 226 of the Constitution of India by filing this writ petition.

4. Respondents 4 and 5 filed counter affidavit. It is stated in the counter affidavit that they purchased land under registered sale deed dated 8-10-2004 from its original owner namely Manikya Prabhu and his two sons. Para 8 of the counter affidavit needs to be noted and it is thus:

"*It is submitted that, the agreement of Sale, dated 1-4-1980 alleged to have* been executed for sale of the lands in S.No. 790 of Yazali *village by Sri Y.Manikya Prabhu our vendor in favour of Y.Sai Kumar brother of the petitioner herein is false and does not convey any title. In fact it was fabricated with an intention to grab the share of our vendor Y.Manikya Prabhu in the land. The signature of Y.Manikya Prabhu contained in the alleged agreement of sale is forged one as stated by him in the notarized affidavit filed before the MRO during Pattadar Pass Books enquiry. Apart from that, theland comprised in S.No. 399 of Yajali purchased by us under Register Sale Deeds dated 12-10-2004 is not subject matter of the alleged unregistered Partition said to have been taken place among the petitioner and her brothers and sisters allotting it to the share of the petitioner. Hence, the claim of the petitioner to obtain Pattadar Pass Books and Title Deeds in respect of the properties covered under the said Register Sale Deeds dated 12-10-2004 is wholly baseless and not supported by any valid evidence. Therefore, the RDO the 2nd respondent is justified in canceling the Pattadar Pass Books and Title Deeds issued to*

both the parties, in the light the suits i.e. O.S.No.156 of 2004 and o.S.No.283 of 2004 filed by the petitioner against us for declaration of right and title is pending disposal".

5. Heard the learned counsel for the petitioner and learned Government Pleader for revenue appearing for respondents No.1 to 3 and the learned counsel appearing for respondents No. 4 and 5.

6. The learned counsel for the petitioner submits that the earlier enquiry made by Revenue Divisional Officer is with regard to validity of pattadar pass books in favour of respondents No. 4 and 5, and issuance of the pattadar pass books in favour of petitioner was not at all issue, before him and, therefore, it is beyond the scope of enquiry before him with regard to cancellation of pattedar pass book/title deed standing in the name of petitioner.

7. The learned counsel appearing for respondents No.4 and 5 submits that the Revenue Divisional Officer has taken into account a detail history of the case and, thereafter, proceeded to cancel the pattadar pass books and title deeds issued by the Mandal Revenue Officer in favour of both the parties and more so during pendency of the suit in the Civil Court in respect of self same property and such is the situation, the order of the Revenue Divisional Officer cannot be faulted.

8. It is no more in dispute that Manikya Prabhu is original owner of the land. The petitioner claims the property through possessory agreement of sale stated to have been executed by Manikya Prabhu in favour of Sai Kumar. Whereas the respondents No.4 and 5 claimed the property under registered sale deed dated 8-10-2004 executed by Manikya Prabhu, and allotment of the lands in division of the family properties. She approached the Mandal Revenue Officer for pattadar pass book/title deed. It appears Mandal Revenue Officer granted pattedar pass book/title deed in her favour, basing on the possessory agreement of sale and division of the family properties among the petitioner and her brothers and sisters. Respondents No. 4 and 5 filed petition before the Mandal Revenue Officer for issuance of the pattadar pass-book in respect of the self same land basing under registered sale deed dated 8-10-2004. The Mandal Revenue Officer without canceling pattadar pass book/title deed already issued in favour of pettioner proceeded to issue pattadar pass book/title deed in favour of respondents No. 4 and 5. The action of the Mandal Revenue Officer cannot be justified. If he is convinced with the claim of the respondents No. 4 and 5, he ought to have cancelled the pattadar pass book/title

deed standing in the name of petitioner and then proceeded to issue pass book in favour of the respondents No. 4 and 5. Be that as it may, the petitioner filed suit O.S.No.156 of 2004 and O.S.No.283 of 2004 seeking the relief of the cancellation of the sale deeds.

9. I deem it appropriate to refer Section 8(2) A.P. Rights in Land and Pattadar Pass Book Act, 1971, which reads as follows::

> *"If any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the entry in the record of rights shall be amended in accordance with any such declaration."*

10. Since, the petitioner has already approached the Civil Court. It is the Civil Court, to adjudicate upon the dispute and decide who is original owner of the lands in question.

11. In that view of the matter, the order passed by the Revenue Divisional Officer does not call for any interference by this Court in exercise of powers under Section 226 of the Constitution of India.

12. Accordingly, the writ petition is dismissed. No order as to costs.

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B.Seshasayana Reddy, J.

28th September, 2005.

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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